

March 12, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB204
Washington, DC 20554

Re: Ex Parte Presentation in MB Docket No. 02-277, MM Docket Nos. 01-235, 01-317, and 00-244

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed as notice that a meeting was held on March 11, 2003 with the following Media Bureau personnel: Ken Ferree, Paul Gallant, Mary Beth Murphy, Royce Sherlock, Steve Broeckhaert, Mania Baghdadi, Roger Holberg, Judy Herman, and Marcia Glauberman.

Attending the meeting on behalf of Disney/ABC were: Alex Wallau, President, ABC Television Network; Mark Pedowitz, Executive Vice President, ABC Television Network; Spencer Neumann, Executive Vice President, ABC Television Network; Dave Davis, President and General Manager, WPVI; Preston Padden, Executive Vice President, Disney World Wide Government Relations; and Susan Fox, Vice President, Disney Government Relations.

The proceeding at issue is not restricted and therefore presentations are permitted, but must be disclosed. During the meeting, the Disney/ABC representatives made the points contained in the attached presentations.

Sincerely,

Susan L. Fox

cc: Ken Ferree
Paul Gallant
Mary Beth Murphy
Royce Sherlock
Steve Broeckhaert
Mania Baghdadi
Roger Holberg
Judy Herman
Marcia Glauberman

**Presentation of The Walt Disney Company and The ABC Television Network
March 11, 2003**

**Reimposition of the repealed financial interest and syndication rules
is entirely unwarranted.**

There is no legal basis for re-imposing the financial interest and syndication rules.

- In 1970, the FCC adopted the former fin syn rules.¹ The FCC based its decision on the competitive landscape at that time, when: (1) the entire television industry consisted of only three networks; (2) the three networks commanded more than 90% of all TV viewing; and (3) there were only 621 television stations, 499 of which were network affiliates. Commissioner Cox justified his vote in part by concluding that – at that time -- “the cable industry is almost totally unwilling to try to move ahead on the basis of generating, paying for, and selling new program services to the American people.”
- By the early 1990’s competition from new broadcast and cable networks eliminated the factual predicate and the legal justification for these restrictions.
- In 1991, the Commission engaged in an ill-fated attempt to revise the fin syn rules, adopting a requirement that no more than 40 percent of a network’s prime-time entertainment schedule could consist of programs produced by the network.² The now-repealed 40 percent requirement is quite similar to that now proposed by some advocates.
- A year later, the Seventh Circuit, in Schurz Communications v. FCC, soundly vacated the 40 percent requirement, as well as all the other the remaining fin syn rules.³ The court stated that the basis for the rules “was never very clear” and expressed deep concern as to whether the fin syn rules ever made any sense because of the perverse results of the rules that television production business became “riskier” and “more concentrated.”⁴ The court stated directly that the FCC could not ignore the decline in market share and market power of the three original networks.⁵
- In 1993, a court dissolved the consent decrees that were entered against the networks in earlier litigation.⁶ That court strongly dismissed allegations of network monopoly or monopsony power, citing the “paucity of evidence” to support such claims.⁷ The court concluded that, “[w]hen all is said and done

¹ Amendment of Part 73 of the Commission’s Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting, Report and Order, 23 FCC 2d 382 (1970).

² Evaluation of the Syndication and Financial Interest Rules, Report and Order, 6 FCC Rcd 3094 (1991); Evaluation of the Syndication and Financial Interest Rules, Memorandum Opinion and Order, 7 FCC Rcd 345 (1991).

³ 982 F.2d 1043 (7th Cir. 1992).

⁴ Id. at 1046.

⁵ Id. at 1054.

⁶ United States v. Nat’l Broadcasting Co., 842 F. Supp. 402 (C.D. Cal. 1993).

⁷ Id. at 405-06.

about the changes in the television industry since 1980 it can hardly be said that 34 percent – or an average slightly more than 11 percent for each of NBC, ABC, or CBS amounts to controlling marketplace power that caused the consent judgments.”⁸

- In 1993, responding to the Schurz decision, the FCC repealed the rules, noting that there were then four broadcast networks and 100 cable networks, and that the three networks’ prime-time shares had decreased from 93 percent in 1975 to 59 percent in 1992.⁹
- The networks have LOST EVEN MORE market power since 1993. Today there are seven English language broadcast networks and more than 300 cable networks. And, in 2001, the cable networks’ collective prime-time ratings surpassed those of the four broadcast networks.
- To re-impose the fin syn restrictions, the Commission must be able to demonstrate that the market conditions that justified the rules in the first place still exist. This cannot be done. The rules could not be justified in 1993, and they surely cannot be justified today.

There is no competitive basis for re-imposing the financial interest and syndication rules.

- Because of all the new networks, program costs have gone up and the size of the average audience attracted by programs have gone down. Therefore, the “cost-per-viewer-delivered” for the networks has skyrocketed. Kagan estimates that, between the 1994-95 season and the 1998-99 season, the license fees paid by networks for each rating point skyrocketed from just over \$45,000 to nearly \$100,000.
- To deal with these challenging economics, ABC has sought (1) to increase the term of its licenses (ABC pays a premium for the longer license term); and (2) to get the right to repurpose (repeat), each episode in an effort to aggregate a larger total audience.
- In the 2001-02 and 2002-03 television seasons, because of these difficult business negotiations and because ABC was not then perceived as the most desirable network on which to place a show, Disney/ABC produced a high percentage of its own shows. However, with the term and repurposing issues now resolved and with a renewed sense of momentum at ABC, more producers are bringing their shows to ABC and ABC’s schedule reflects an increasing number of non-Disney/ABC shows.

⁸ Id. at 404.

⁹ Evaluation of the Syndication and Financial Interest Rules, Second Report and Order, 8 FCC Rcd 3282 (1993).

- Even in the current 2002-03 season, the following independently-produced shows, in which ABC has no financial interest or right, are on the ABC prime-time schedule:
 - Dragnet;
 - NYPD Blue;
 - The Practice;
 - George Lopez;
 - Drew Carey;
 - Whose Line Is It Anyway?;
 - The Mole; and
 - Profiles from the Front Line.
- For the 2003-04 season, ABC has ordered pilots from the following outside producers:
 - Warner Bros. (five);
 - Universal Television (two) ;
 - Tollin-Robbins/Warner Bros.;
 - Brad Grey TV/20th Century Fox;
 - 20th Century Fox/Imagine TV; and
 - Carsey-Werner-Mandabach.
- Those arguing for re-imposition of the fin syn rules focus only on comedy and drama programming, and they ignore the role of independent producers in reality programming and made-for-television movies. In the 2002-03 season alone, ABC aired made-for-television movies from the following non-Disney producers: Universal, Hallmark, Fox Television, Paramount Pictures, and Handmade Films.
- Successful independent producers are doing very well in today's marketplace, particularly as compared to the extremely challenging economics of the broadcast networks. A few examples:
 - Oct. 27, 1999 Variety – David Kelly signs a production deal with 20th Century Fox worth an estimated \$50 Million PLUS “backend guarantees built in that are potentially worth hundreds of millions of dollars”.
 - Feb. 6, 2003 Variety – John Wells Prods. Signs a production deal with Warner Bros. Worth an estimated \$70 Million. This deal was fueled by the \$13 million per episode network license renewal for “ER” and the \$7 million per episode network license renewal for “The West Wing”.
- Producers have many networks to which they may seek to license their programs. Examples include: HBO, Showtime, Comedy Central, USA, TNT, Lifetime, TNN, The Sci-Fi Channel, A&E, Hallmark, or even to first-run television syndicators such as King World, Tribune, Sony, or Warner Bros.

Given the changes in the competitive landscape since the early 1970s, there simply is no conceivable legal or competitive basis for re-imposition of the fin syn rules. Any such effort would be ill-conceived and would be soundly rejected by the courts.

ABC Localism Presentation
Dave Davis
President and General Manager
WPVI, Philadelphia

WPVI has always been – and continues to be – committed to localism.

- WPVI airs 35 hours per week of live, local news programming and six weekly public affairs programs, including the nation's longest-running Hispanic themed program. WPVI is currently preparing to air the St. Patrick's Day (one of four parades broadcast each year), a program opening the Philadelphia Flower Show, and a program opening the National Constitution Center later this year.
- WPVI's 6:00 pm newscast attracts more viewers than all the other local competitive newscasts COMBINED.
- WPVI presents more local political debates than all the other local stations COMBINED.
- WPVI has continued to increase the resources it devotes to localism during the recent advertising recession, when many broadcasters have reduced staffs. No one at ABC or Disney has given WPVI any mandate other than to provide the best local news and information every day.
- During the recent snowstorm, WPVI was the preeminent source of emergency information, with a viewer base more than twice the size of any other television station and larger than all the radio and cable news outlets combined. WPVI preempted profitable network and syndicated programming to provide emergency information to viewers, to solicit volunteer drivers, and to provide information to prevent carbon monoxide poisoning and roof collapses. In total, WPVI provided more than eight additional hours of emergency coverage, costing the station hundreds of thousands of dollars.
- WPVI is committed to reporting national stories with on-site local reporters. WPVI reporters traveled to Texas to cover the shuttle disaster, and WPVI has a reporter stationed in Kuwait to cover the developing Iraqi situation.

WPVI's commitment to localism is shared by the nine other ABC owned television stations.

- The record in this proceeding contains substantial evidence that network owned stations present MORE local news than do stations owned by affiliates. And the record shows that the smaller the market, the GREATER the quantitative superiority of the network owned stations. These conclusions are supported not only by the FCC's and the networks' studies, but also by the data provided by NASA/NAB.
- ABC increased the amount of news on its two most recent stations purchases in 1994, WJRT, Flint, and WTVG, Toledo, increasing the weekly amount of news on WJRT from 25 to 54 half-hours, and on WTVG from 34-53 half-hours.
- On average, ABC owned stations provide 28.4 hours per week of local news, and are leaders in their markets.